

**REGULAR STATE CREDIT UNION BOARD MEETING
HELD BY CONFERENCE CALL
OFFICE OF THE COMMISSIONER
DEPARTMENT OF FINANCIAL INSTITUTIONS
2000 SCHAFFER STREET, SUITE G
BISMARCK, NORTH DAKOTA**

December 14, 2005

The regular meeting of the State Credit Union Board was called to order by Chairman Karsky in the Office of the Commissioner, Department of Financial Institutions, 2000 Schaffer Street, Suite G, Bismarck, North Dakota, at 9:32 a.m., Friday, December 14, 2005.

MEMBERS PRESENT: Timothy J. Karsky, Chairman
Paul Brucker, Member
Melanie Stillwell, Member
Steven S. Tonneson, Member

MEMBER ABSENT: Judy A. Millar, Member

ALSO PRESENT: Robert J. Entringer, Secretary
Jim Laidlaw, Chief Examiner – Credit Unions
Corey Krebs, Financial Institutions Examiner
Todd Van Orman, Financial Institutions Examiner
Kermit Larson, North Dakota Credit Union League
Marilyn Foss, General Counsel, ND Bankers Association
Erin Olstad, Elm River CU, Page
Denton Zubke, Dakota West CU, Watford City
Malcolm Brown, Dakota West CU, Watford City
Marge Lang, First Community CU, Jamestown
Stuart Higginbotham, First Community CU, Jamestown
Deb Gallagher, Capital CU, Bismarck
Greg Tschider, Counsel
Darla Schaffer, Flasher Community CU, Flasher
Darwin Brokke, Citizens Community CU, Devils Lake
Doug Wolf, Midwest Corporate Federal CU, Bismarck

MINUTES PREVIOUSLY APPROVED BY MAIL

Chairman Karsky indicated the Board had previously received and approved the minutes of the regular meeting held on September 16, 2005, and the special meeting held on October 14, 2005.

APPLICATIONS TO ESTABLISH BRANCHES BY FIRST COMMUNITY CREDIT UNION, JAMESTOWN

Assistant Commissioner Entringer reviewed his Memorandum dated December 5, 2005, noting the applications to establish branches at Highway 83 & Skyline Boulevard, Bismarck, and East Bismarck Expressway & 26th Street, Bismarck, were received on November 2, 2005, and notice was published in the *Bismarck Tribune* on Wednesday, November 8, 2005. No comments were received concerning the applications, nor were there any requests for copies of the applications.

Assistant Commissioner Entringer noted the branches are within the credit union's current field of membership and there is no proposal to expand its field of membership at this time.

Assistant Commissioner Entringer reviewed Section 13-03-15-04 of the North Dakota Administrative Code, which sets forth the criteria a credit union must follow when establishing a branch. Assistant Commissioner Entringer noted the credit union's Board of Directors approved the branch applications on October 26, 2005. Also noted is that the branches are within the credit union's current field of membership; therefore, there is no application to expand the field of membership. The Department did not receive any opposition or comment from other credit unions in the area.

Assistant Commissioner Entringer stated in regard to expressed need, the applicant indicated the branches will provide member convenience to those who live in the field of membership for Bismarck-Mandan, and also notes the growing population of the Bismarck-Mandan metro area. The credit union anticipates an opportunity to put the name of the credit union in front of as many as 100,000 people per week, which is an opportunity for all credit unions.

The Memorandum also noted the Department has not received any opposition concerning the branches. In regard to whether the area being considered is satisfactorily served by a current operating credit union, the proposed branches are within the credit union's current field of membership and the applicant indicates the branches will make it more convenient for additional members to use credit union services.

Assistant Commissioner Entringer stated another area the Board must consider is whether the credit union has the ability to succeed with the branches, and as indicated in the projections the branches will not show a profit in the first three years of operation, and per the minutes of the credit union's Board of Directors, they are not expected to be profitable until the fourth year. However, the overall operation of the credit union will remain profitable and the first three years of losses are expected to be recouped by the end of the fifth year.

Chairman Karsky asked President Higginbotham if he had additional comments to support his application.

President Higginbotham indicated the credit union had received a call from a company called Financial Supermarkets, Inc., which is a company that has contracted with WalMart to place financial institutions inside their Super WalMarts. President Higginbotham indicated Financial Supermarkets, Inc., reviewed the financials of all the institutions in the community and chose First Community Credit Union, as well as one bank, both of whom were asked to submit an application. Ultimately the application by First Community Credit Union was selected, at which point the credit union began the process of putting together its budget as well as the application, and met with Commissioner Karsky and Assistant Commissioner Entringer to present its application.

Chairman Karsky asked President Higginbotham if the credit union had to take both locations, and President Higginbotham indicated that preference was given if you agreed to both locations.

Chairman Karsky asked how the stores are progressing and President Higginbotham indicated the south side location is supposed to open in April 2006, and the credit union is scheduled to meet with Financial Supermarkets, Inc., on December 15, 2005, to discuss working on the design of the branch office if the application is approved. President Higginbotham indicated the north side location

has been delayed, although the credit union has been told they would like to open as soon as possible, which he expects to be open later in the fall of 2006.

President Higginbotham indicated the north side WalMart is approximately two miles north of their existing north branch, and as of this time the credit union plans on keeping all other branch offices open.

Member Brucker asked about lease terms, and President Higginbotham indicated the credit union has a guaranteed five-year lease with two options for renewal, which are at the discretion of the credit union.

Member Stillwell inquired about leasehold improvements, and President Higginbotham indicated the credit union will pay for all leasehold improvements, there will be no drive-ups, adding that the contract has a very specific floor plan and terms as far as how the operation will work.

President Higginbotham indicated the projections include additional staff, rather than moving staff from other locations because the credit union has to guarantee so many hours per week of operation.

Member Tonneson asked about any restrictions placed on the credit union by WalMart, and President Higginbotham said he would not say there are restrictions, but they do have a certain level of performance, presence, and reliability; adding it is nothing unusual as far as professional standards.

Member Stillwell inquired about ATMs, and President Higginbotham indicated there will be at least one ATM in each Super WalMart, which is built into the budget and contract.

Chairman Karsky asked Chief Examiner Laidlaw if he had any comments, and Chief Examiner Laidlaw indicated he felt this was a good deal for the credit union, as well as the credit union industry.

Assistant Commissioner Entringer noted it is the recommendation of the Department to approve the applications by First Community Credit Union, Jamestown, to establish branches at Highway 83 & Skyline Boulevard, Bismarck, and East Bismarck Expressway & 26th Street, Bismarck. Assistant Commissioner Entringer stated a proposed Order is attached containing the following conditions: the applicant secure approval for the locations from the National Credit Union

Administration; the applicant notify the Department when the branches become operational; the credit union has until December 14, 2006, to commence business at the locations, unless further extended or modified by the Board; and that the applicant must report to the Board any material changes in the application for their consideration, as to the effect on the approval granted herein.

President Higginbotham indicated he has notified NCUA, but has not received approval at this time.

It was moved by Member Brucker and seconded by Member Tonneson to approve the applications by First Community Credit Union, Jamestown, to establish branches at Highway 83 & Skyline Boulevard, Bismarck, and East Bismarck Expressway & 26th Street, Bismarck, as well as the proposed Order. The motion carried by a vote of 4 to 0, with Member Millar absent.

DAKOTA WEST CREDIT UNION, WATFORD CITY – APPLICATION TO MERGE WITH MOHALL CREDIT UNION, MOHALL; APPLICATION TO ESTABLISH A BRANCH AT 202 EAST MAIN, MOHALL; AND APPLICATION TO EXPAND ITS FIELD OF MEMBERSHIP

Chairman Karsky reviewed his Memorandum dated November 7, 2005, which indicates notice of the three applications were published in the *Moose River Journal*, Towner, *McKenzie County Farmer*, Watford City, *Minot Daily News*, Minot, *Burke County Tribune*, Bowbells; *Bottineau Courant*, Bottineau; and the *Renville County Farmer*, Mohall. Direct notice of the applications was also sent to the Minot Union Trades Credit Union, Minot; Edgewood Vista Credit Union, Minot; Minot Area Schools Federal Credit Union, Minot; Town and Country Credit Union, Minot; GEM Federal Credit Union, Minot; Northern Tier Federal Credit Union, Minot; Prairie Federal Credit Union, Minot; Affinity First Federal Credit Union, Minot; Tel-U-Watt Federal Credit Union, Minot; Mohall Credit Union, Mohall; and Dakota West Credit Union, Watford City. The application was also listed on the Department's monthly *Bulletin* which is sent to all North Dakota financial institutions.

Chairman Karsky reviewed the portion of the Memorandum dealing with the merger, which indicates the applications are governed by Chapter 13-03-05 of the North Dakota Administrative Code. Section 13-03-05-01 sets forth the procedure a credit union planning to merge must follow, noting that the Mohall Credit Union's

Board of Directors passed a Resolution on August 2, 2005, approving the merger with Dakota West Credit Union, Watford City. In addition, Dakota West Credit Union's Board of Directors adopted a Resolution on August 17, 2005, approving the merger with Mohall Credit Union. The Mohall Credit Union held a membership meeting with 23 members present; 21 voting in favor of the merger, and 2 voting against the merger. Dakota West Credit Union voted 11 in favor of the merger, and 0 against. The Department received an official application and letter for the merger was received on August 30, 2005. The applicant has made application to the National Credit Union Administration, and it is believed that all laws and regulations have been complied with.

Section 13-03-05-04 sets forth the criteria the State Credit Union Board should consider when approving a merger, including whether proper notification has been given to all members. As indicated earlier, proper notice was accomplished. Secondly, comments of the members of each credit union to be merged should be considered; no comments have been received for or against the merger. The third criterion is in regard to the financial condition of the continuing credit union; as indicated in the projections it appears the merger will not have a significant impact on the surviving credit union.

Chairman Karsky reviewed the portion of the Memorandum dealing with branching, which indicates the Department received the application from Dakota West Credit Union to establish a branch at 202 East Main, Mohall, which is the main office of Mohall Credit Union.

Section 13-03-15-02 of the North Dakota Administrative Code states that any state-chartered credit union may establish a branch facility subject to the approval of the State Credit Union Board in accordance with provisions of this Section. Section 13-3-15-04 states a credit union wishing to establish a branch shall comply with the following: (1) Approval to establish a branch must be given by a majority of the Board of Directors; such approval was given by Dakota West Credit Union on August 17, 2005. (2) After approval by the Board of Directors of each credit union, application must be made to the State Credit Union Board to establish the branch; the application was received by the Department on August 25, 2005. (3) The credit union shall at least 30 days prior to the date of consideration by the State Credit Union Board cause to be published a notice in the official newspaper of the county or counties affected by the proposed branch expansion; as stated earlier, the Department published notice of all three applications which complies with this Section.

The State Credit Union Board when considering the branching of a credit union must consider the following: (1) If the branch is for an open charter, and if the application to establish a branch is accompanied by an application to expand the field of membership, exact geographical boundaries expressed by city, county, township or highway boundaries, or a stated radius from the branch office must be clearly spelled out. The Department did receive an application to expand the field of membership, which would be a 50 mile radius of Mohall. (2) Whether there would be any negative impact to any other state or federally chartered credit union in North Dakota. Because this application involves a merger, the Department does not feel it will have a negative impact to any other credit union. (3) Determine the expressed need in the branching area; again, because of the merger, the branch will allow Dakota West Credit Union to continue to serve the previous members of the Mohall Credit Union and to provide additional services. (4) Whether there is any expressed opposition to the branch by any other credit union in North Dakota; the Department has not received any comments opposing the application as of the date of the Memorandum. (5) If the branch is for an open charter, whether the area being considered is satisfactorily served by a currently operating credit union. Because the Mohall Credit Union is being merged out of existence, this branch will allow an opportunity for Dakota West Credit Union to continue servicing the prior members, and there is no other credit union in the Mohall area. (6) The credit union must demonstrate the ability to succeed with the branch. The projections show that Dakota West Credit Union will be able to succeed with the additional branch.

Chairman Karsky indicated the portion of the Memorandum dealing with the applicant to expand the field of membership notes the application was received on August 25, 2005. Section 13-03-14-02 of the North Dakota Administrative Code permits a credit union to expand its field of membership upon approval by the State Credit Union Board, and the Board must consider the following: (1) If the expansion is for an open charter, the exact geographical boundaries expressed by city, county, township or highway boundaries, or a stated radius from the principal or branch offices must be clearly spelled out; as noted in the application, Dakota West Credit Union will be expanding its field of membership to include a 50 mile radius of Mohall. (2) The negative impact to any other state or federally chartered credit union in the expanded area; no other credit union is located within the expansion area. (3) The expressed need in the expansion area; the application states that the Mohall Credit Union is facing difficulties providing services to its members and has struggled financially. This merger will benefit Mohall Credit Union members, staff, and the community by providing debit cards, credit cards, home banking, phone banking, electronic bill pay, and numerous other services. The

merger will also stabilize and add benefits to the staff. The community will benefit due to the stability of the branch and other commitments through goodwill donations, community support, and a progressive attitude. (4) Any expressed opposition to the expansion of the field of membership by any other credit union; as of the date of this Memorandum there has been no expressed opposition received by the Department. (5) If the expansion is for an open charter, whether the area being considered is satisfactorily served by a currently operating credit union; with the merger of the Mohall Credit Union pending, there will be no other credit union operating in the vicinity. (6) The credit union must demonstrate the ability to succeed in expanding its field of membership; again, as indicated by the projections, Dakota West Credit Union will be able to succeed in operating this branch and expanded field of membership. (7) Relevant public comment in favor or opposition of expanding the field of membership; as of the date of this Memorandum, no comments have been received for or against the application.

The applicant must also meet the requirements set forth in Section 13-03-14-03 of the North Dakota Administrative Code which includes approval to expand the field of membership must be given by a majority of the Board of Directors of the credit union; such approval was granted by the Board of Directors of Dakota West Credit Union on August 17, 2005.

The application was received by the Department on August 25, 2005, and appropriate Amendments to the Bylaws have been made and amended since the original application.

Publication was accomplished by the Secretary of the State Credit Union Board, and meets the requirements of the North Dakota Administrative Code.

Chairman Karsky asked CEO Zubke to review the Amendment to the Bylaws for the field of membership. CEO Zubke indicated the original application included Mohall and immediate family members, which he subsequently discovered would be construed as a field of membership expansion, so he amended the application and reworded the bylaws to eliminate the inclusion of immediate family members for the Mohall field of membership radius. Chairman Karsky added that was because Mohall never had immediate family members, which CEO Zubke agreed was correct.

Chairman Karsky asked CEO Zubke to review the application for the Board. CEO Zubke stated Dakota West Credit Union has done business in the form of

participation loans, as well as provided advice, and had a substantial relationship with Mohall Credit Union over the last five to seven years. CEO Zubke said the Mohall Credit Union struggled to provide services and realized it was losing members to other financial institutions. The Mohall Credit Union's Board of Directors put together a plan on how they should deal with the situation, which included interviewing credit unions for possible merger. Mohall Credit Union's Board of Directors interviewed four credit unions and each was given an equal opportunity to meet with the Board, after which the Board made a decision to merge with Dakota West Credit Union. CEO Zubke indicated the pertinent comments he has received is a frustration from the staff, indicating customers are asking for additional services because they think the merger has already been accomplished.

Member Stillwell asked if she should participate in this application, since Western Cooperative Credit Union was one of the credit unions approached concerning the possible merger. Assistant Attorney General Miller indicated Member Stillwell can participate, and discussed the rule of necessity, which requires State Credit Union Board members to participate, adding although there is a rule which states if there is a motion on the table involving that member's credit union, that member can abstain. Since that is not the issue in this case, Member Stillwell can and should participate in this application. Assistant Attorney General Miller pointed out that if Member Stillwell does choose to abstain, her vote would be counted with the majority.

Member Tonneson asked about staffing, and CEO Zubke indicated the current manager as well as the staff of Mohall Credit Union will remain.

CEO Zubke indicated Mohall Credit Union had assets of \$4.4 million when the merger process began and is now down to approximately \$4.2 million.

Chairman Karsky asked what Dakota West Credit Union's assets are presently, and CEO Zubke stated approximately \$51-\$52 million, adding that Mohall Credit Union's capital asset ratio is slightly higher than Dakota West Credit Union and if the merger is approved Dakota West Credit Union's capital asset ratio would be raised approximately four basis points.

Chairman Karsky asked about Board composition since the Mohall Credit Union Board of Directors will be eliminated with the merger, and wondered whether Dakota West Credit Union would add a member from the Mohall Credit Union's Board of Directors or if Dakota West Credit Union will establish an

Advisory Board. CEO Zubke stated typically they offer two situations; one is the Mohall Credit Union's Board of Directors could act as an Advisory Board and was advised of what authority it would have. CEO Zubke pointed out that during this process Dakota West Credit Union had a Board member resign, so he offered that position to a Mohall Credit Union Board member. CEO Zubke indicated no one has yet asked to be appointed to the remaining Board of Directors.

Chairman Karsky asked about the Supervisory Committee, and CEO Zubke pointed out they have a CPA firm acting as the Supervisory Committee, with the Board of Directors supervising the CPA firm.

Chairman Karsky asked CEO Zubke to review the current branches of Dakota West Credit Union. CEO Zubke indicated the first branch was in Grenora, adding when that location was acquired it had approximately \$1 million in assets and \$800,000 in loans, and presently has approximately \$10 million in loans and \$8 million in assets. He indicated that branch has become a very substantial part of the operation. CEO Zubke stated the next acquisition was Parshall Credit Union, which had approximately \$300,000 in assets, and Dakota West Credit Union's Board of Directors committed to keep that operation open for at least one year, but in fact kept it open for two years. During that timeframe the Sanish Farmers Union Credit Union in New Town decided it wanted to merge and when that branch became operational, the branch at Parshall was closed since it was no longer effective. CEO Zubke indicated the next merger was with Turtle Lake Community Credit Union, and at that time also established a branch in Washburn, which did not constitute an expansion of field of membership since it was within the current field of membership. CEO Zubke indicated Dakota West Credit Union received approval in 2004 to merge with Riverdale Federal Credit Union; however, the merger was not completed until 2005. CEO Zubke stated that each of these locations has a branch manager with 4 to 15 years of experience in a financial institution. CEO Zubke indicated he oversees each branch; however, most of the branches operate as they did in the past except that he now makes any key decisions.

Chairman Karsky questioned why Mohall Credit Union has been struggling; if it was due to a lack of advertising or promotion, or because of the Board of Directors, and questioned CEO Zubke as to why he believes this can be a successful branch. CEO Zubke explained a few years ago Mohall Credit Union built a new building which was necessary in order to operate a professional-looking office, but it hurt the credit union's income. Also the credit union was somewhat overstaffed according to the amount of assets and loans, which also suppressed its profitability.

Finally, the credit union has not been attracting new business by offering services. CEO Zubke stated staff will not be reduced, but by reducing responsibilities the manager will be expected to do things in the community to try and attract new business.

Chairman Karsky asked if the Mohall branch manager will retain her lending authority. CEO Zubke stated she would, adding there is an ag lending officer who has been with the credit union for quite some time.

Chairman Karsky stated if the merger is approved, all policies will become policies of Dakota West Credit Union, and questioned what type of training will be provided for the employees. CEO Zubke stated first they will install their loan system and all loans will be done on Dakota West Credit Union's server, so during the first 6 to 12 months any new loans will be reviewed by Dakota West Credit Union to make sure they comply with policies and procedures before the member signs. Secondly, within the first 30 days a Dakota West Credit Union employee will go through the deposit procedure in Mohall so it conforms to the procedures of Dakota West Credit Union. Mohall Credit Union is on the same data processing system as Dakota West Credit Union, but are not using the same platform so they will need to conduct three or four days of training so that each branch is doing exactly the same thing. CEO Zubke indicated the first couple weeks he will be at the branch quite frequently, but within 30 days things seem to fall into place. CEO Zubke indicated phone, fax, and interoffice email are available so communication with any branch office is not a problem.

Member Stillwell asked how the branches in Turtle Lake and Riverdale have progressed. CEO Zubke indicated Turtle Lake's loan volume has almost doubled since 2002; however, the deposit side has been slower. CEO Zubke estimates in the last 12 months Turtle Lake has added approximately \$1 million in deposits, which has lifted the net income from approximately \$2,000 to \$5,000 per month.

Member Brucker indicated as of a few weeks ago the Riverdale office sign still read Riverdale Federal Credit Union. CEO Zubke stated the sign should have been changed last spring but there was a problem with the sign company; he is now working with a new sign company, but they have not provided the new sign yet either. Member Brucker asked if all other branches have signs indicating Dakota West Credit Union, and CEO Zubke stated that is correct.

Chairman Karsky stated he was made aware of an ad in a *Dollar Saver* in the Hazen-Beulah-Stanton area listing offices of Dakota West Credit Union in Mohall, New England, and Bowman; however, approval has not yet been granted for these locations. CEO Zubke stated he accepts full responsibility for that, indicating that all advertisements are approved at the main office; however, between the individual at the branch and the newspaper, they decided to add these new branches because the staff person thought these had already been approved. CEO Zubke indicated he did not feel this caused any damage; however, he feels it would have been worse had this been published in the New England or Bowman area.

Chairman Karsky asked CEO Zubke if he was involved in the daily operation of Mohall, and CEO Zubke indicated he is not although the credit union is forwarding any new loan requests in excess of \$20,000 to \$25,000 for his approval. CEO Zubke stated he tells the credit union if they are going to make any major purchase decisions or new loans to a new customer, he would like to be involved.

Member Tonneson asked if there was a Credit Committee, and CEO Zubke indicated internally there is which is made up of staff. Member Tonneson asked how the Credit Committee worked, and CEO Zubke stated that any loan over \$200,000 requires approval by three members of the five person Credit Committee. CEO Zubke indicated loans of \$200,000 or less can be approved by three loan officers or himself. CEO Zubke indicated any loans over \$75,000 to \$100,000 at Mohall are already participated with the Dakota West Credit Union, so those loans have been seen for approximately the last 3 to 4 years. CEO Zubke indicated presently the Mohall manager and other loan officer can approve loans up to \$50,000, which will likely be maintained.

Chairman Karsky asked if there would be a problem if the Mohall manager decided to leave because of the new responsibilities, and CEO Zubke indicated it would not.

Chairman Karsky indicated the Department does recommend approval for all three applications submitted by Dakota West Credit Union, along with proposed Orders.

Chairman Karsky reviewed the conditions proposed in the Order, which requires approval of the merger by NCUA before consummation of the merger, along with the bonding company's letter of intent to extend coverage for past acts of the Mohall Credit Union and additional offices, premises, employees, directors, and other exposures be submitted to the Department after the merger. Also,

financial reports for both credit unions must be submitted immediately prior to the merger, and a combined financial report must be submitted to the Department as of the effective date of the merger, as well as a certificate of completion of merger. The merger must also be consummated by December 14, 2006.

Member Tonneson asked about the current Board composition of Dakota West Credit Union, and CEO Zubke indicated they currently have four members and one vacancy. Member Tonneson asked if the Board membership is spread out regionally or are all the members from Watford City. CEO Zubke stated the Mohall members have been informed of the vacancy and would be able to run for election at the annual meeting. Member Tonneson questioned if a member is required from each of the branch locations, and CEO Zubke indicated no. Member Tonneson asked what constitutes a quorum for the field of membership expansion, and CEO Zubke indicated a quorum is 10.

It was moved by Member Tonneson and seconded by Member Brucker to approve the applications by Dakota West Credit Union, Watford City, to merge with Mohall Credit Union, Mohall, along with the application to expand its field of membership and establish a branch in Mohall, as well as the proposed Orders.

Chairman Karsky inquired whether Dakota West Credit Union has received a response from NCUA regarding this merger application, and CEO Zubke indicated NCUA has given preliminary approved pending the approval of the State Credit Union Board.

The motion was carried by a motion of 4 to 0, with Member Millar absent.

The Board took a break at 10:22 a.m., and reconvened at 10:30 a.m.

ELM RIVER CREDIT UNION, PAGE – APPLICATION TO EXPAND ITS FIELD OF MEMBERSHIP

Chairman Karsky reviewed his December 5, 2005, Memorandum, which notes the current field of membership of Elm River Credit Union, Page, is a 50 mile radius of Page, along with the entire area north of Highway 13 in Richland County. The request is to expand the field of membership to a 75 mile radius of Page, North Dakota.

Chairman Karsky stated that Chapter 13-03-14 of the North Dakota Administrative Code, entitled Field of Membership, states that a North Dakota state-chartered credit union may expand its field of membership subject to approval by the State Credit Union Board in accordance with the provisions of this Chapter and Chapter 6-06 of the North Dakota Century Code. When considering an application for an expansion of the field of membership, the State Credit Union Board shall consider the following: (1) If the expansion is for an open charter, the exact geographical boundaries expressed by city, county, township or highway boundaries, or a stated radius from the principal or branch offices must be clearly spelled out. As indicated in the application, Elm River Credit Union is requesting to expand its field of membership to a 75 mile radius, which is considered a reasonable geographical boundary. (2) The negative impact to any other state or federally chartered credit union in the expanded area; although the application is silent, there have been no comments received concerning the expansion. (3) The expressed need in the expansion area; Manager Olstad stated in her November 23, 2005, letter to the Department that the expressed need for the field of membership expansion is due in part to the credit union's upcoming Horace branch. Manager Olstad indicated there are areas close to Horace that are not included in the current field of membership. (4) Any expressed opposition to the expansion of the field of membership by any other credit union; as of the date of this Memorandum the Department has not received any letters or comments opposing the application. (5) If the expansion is for an open charter, whether the area being considered is satisfactorily served by a currently operating credit union. It appears from reviewing the map that the additional 25 mile expansion area is served by several credit unions; however, as of this date no other credit union has indicated this will impact their credit union. (6) The credit union must demonstrate the ability to succeed in expanding its field of membership. As indicated in the application, Elm River Credit Union will become profitable during the second year of operation. Chief Examiner Laidlaw indicated he has no problem with the expansion at this time and does not feel it will harm the credit union. (7) Relevant public comment in

favor or opposition to expanding the field of membership; as of the date of the Memorandum no comments have been received concerning the application.

Section 13-03-14-03 of the North Dakota Administrative Code sets the application requirements in order for a credit union to expand its field of membership. The Elm River Credit Union's Board of Directors approved this application on August 15, 2005; subsequent to that, the application was received by the Department on September 22, 2005.

The Amendment to the Bylaws was received with the application to expand the field of membership on September 22, 2005, and notice of the application was published in *The Forum*, Fargo; *Lakota American*, Lakota; *Grand Forks Herald*, Grand Forks; *New Rockford Transcript*, New Rockford; *Foster County Independent*, Carrington; *Jamestown Sun*, Jamestown; *LaMoure Chronicle*, LaMoure; and *Ransom County Gazette*, Lisbon. The publication did note that the application would be considered on December 14, 2005, at 9:30 a.m., and the Department also included this application in its monthly *Bulletin*.

Chairman Karsky asked Manager Olstad if she would like to add any comments in support of her application. Manager Olstad indicated with the credit union's expansion into Horace there are some areas in the current field of membership that are not covered; therefore, this request simplifies the field of membership to a straight 75 mile radius of Page. Manager Olstad indicated they expect to start construction of the Horace branch in the spring, with completion in the fall of 2006. Manager Olstad indicated the proposed field of membership includes the same area of Richland County.

Chairman Karsky indicated the expansion of field of membership request should not impact the net income of Elm River Credit Union.

Assistant Commissioner Entringer indicated the Horace branch application was approved by the State Credit Union Board in July 2005.

Manager Olstad indicated there is no other financial institution in Horace, and that Horace is a booming community, with the growth being phenomenal.

Chairman Karsky asked if there are individuals living south of Highway 13 that have expressed an interest in joining Elm River Credit Union, and Manager

Olstad stated not at this time. Manager Olstad indicated the expansion would benefit individuals in the Lisbon and McLeod area.

It was moved by Member Stillwell and seconded by Member Tonneson to approve the application by Elm River Credit Union, Page, to expand its field of membership to a 75 mile radius of Page. The motion carried by a vote of 4 to 0, with Member Millar absent.

DAKOTA WEST CREDIT UNION, WATFORD CITY – APPLICATION TO MERGE WITH HEARTLAND COMMUNITY CREDIT UNION, NEW ENGLAND; APPLICATION TO ESTABLISH A BRANCH AT 900 MAIN STREET, NEW ENGLAND; AND TO EXPAND ITS FIELD OF MEMBERSHIP

Chairman Karsky indicated the Department has received a Notice of Intent and Protest, and Petition to Intervene from Marilyn Foss, General Counsel of the North Dakota Bankers Association. Chairman Karsky indicated this Notice was received on December 8, 2005, and according to the North Dakota Administrative Code, it should have been received five business days prior to this meeting.

Chairman Karsky asked Assistant Attorney General Miller to review the matter with the Board. Assistant Attorney General Miller indicated in Section 13-01.1-01-11, entitled Suspension of Rule, states that the Board reserves the right to suspend, either upon its own motion or upon the motion of any party, the operation of or necessity for compliance with any rule, procedure, or part thereof, upon due notice to all parties, whenever the public interest or the interest of any party to a proceeding will not be substantially prejudiced thereby. The power to suspend these rules may be exercised by the Commissioner. For every such exercise of power by the Commissioner is subject to review by the State Credit Union Board. Assistant Attorney General Miller stated that essentially that gives the Board the power to waive the five-day requirement for the Petition to Intervene which was not met in this case. Assistant Attorney General Miller indicated it is the Board's decision whether to accept the Petition to Intervene and allow the argument. Assistant Attorney General Miller stated the Board can certainly give the petitioner the opportunity to make any comments, and indeed those comments are something the Board would want to take into account regardless of whether the Petition to Intervene is accepted.

Chairman Karsky stated he feels this is a good rule, citing as an example a petition that might be mailed from California which may not be received until after the Board has met, and this rule requires it be received five days before the Board convenes. Chairman Karsky stated his opinion in this case is that this is an issue that needs to be resolved, and whether the Board accepts the Petition to Intervene, it still has to address these issues anyway. Therefore, Chairman Karsky indicated he would like to waive the requirements if the Board agrees.

Assistant Attorney General Miller indicated the difference between considering the arguments made or actually allowing the Petition to Intervene is that if a petitioner is allowed to intervene they actually become a party to the proceeding and would have all the rights of a party, including appealing any decision or asking for a hearing, and appealing that decision up to the District Court. Assistant Attorney General Miller stated that is a major difference from just having the ability to comment.

Chairman Karsky indicated a hearing could be called if the Board believes it to be in the public interest, at which point we would start the process over by giving notice, set a hearing date, request an Administrative Hearing Officer, and then proceed with the hearing. Assistant Attorney General Miller added the North Dakota Bankers Association would then have an opportunity to intervene at that time also.

Member Brucker questioned the Board's options, which he summarized as: ignore the Petition to Intervene since it did not meet the time line; accept it as comments; or waive the rule and bring this to the table. Chairman Karsky added the Board could order a hearing, which would eliminate acting on this application today.

Chairman Karsky recognized Marilyn Foss and allowed her to address the Board.

Ms. Foss indicated the rule does not say the Petition must be received five days in advance, but that it must be filed. Ms. Foss continued that if a court told her to file a Brief on a certain day she would place it in the mail on that date, which would be considered as filing; adding that when tax returns are filed, as long as they are mailed by April 15th they are considered filed. Ms. Foss continued if the rule had said "must be received in the office five business days in advance" we would have a different matter. Ms. Foss stated, without meaning any disrespect to

Commissioner Karsky or Assistant Attorney General Miller, it is her position that she did conform to the rule as it is written. Beyond that, a motion to suspend the rule because the issues raised are material not just with respect to this credit union, but as a matter of fact to how this Board applies a new law, and in your performance of your obligations as the State Credit Union Board and not simply as people who are involved in the credit union movement, it would seem to Ms. Foss that you would want to hear and have a full consideration of the issues that relate to this new law.

Assistant Attorney General Miller stated as far as the interpretation of what filing means is open to the interpretation of the Board, adding that he does not deal with a great deal of litigation; however, he thought under the rules of civil procedure if the deadline for filing is less than 10 days prior to the commencement of a hearing, filing has to be received by the court on that date, not mailed by that date. He pointed out that this is a 5 day restriction and that he does not feel putting it in the mail is actually filing even under the rules of civil procedure. Nonetheless, this is a rule of the State Credit Union Board and any other interpretation of the rule is entitled to deference.

CEO Zubke then asked if he was permitted to make a comment, and Chairman Karsky indicated he could proceed. CEO Zubke indicated he was not sure what was most appropriate, but he would either petition the Board to consider his application without the immediate family members of said residents, or he would like to amend his application to remove that language.

Chairman Karsky stated we have the same intervention on two other pending applications, adding the decision will likely be the same. Chairman Karsky asked Assistant Attorney General Miller if these interventions had to be looked at individually, and Assistant Attorney General Miller stated that only the one application is currently before the Board.

Chairman Karsky questioned if CEO Zubke's request to amend his application is considered, would that remove all the arguments by Ms. Foss regarding this application.

Ms. Foss stated the three applications being discussed are not the same situation, adding that the Capital Credit Union, Bismarck, and North Star Community Credit Union, Maddock, situations are slightly different. The application before the Board today involves a merger and the statute with respect to

mergers is even more specific, in that the surviving credit union may expand the field of membership to include the geographic field of membership of the merged credit union. CEO Zubke's petition to remove the immediate family language conforms to the statute, so his amending the application would resolve the issues of the North Dakota Bankers Association.

Chairman Karsky asked CEO Zubke if he would like to amend the application, and CEO Zubke stated he would.

Chairman Karsky asked Assistant Attorney General Miller if the Board needed to take any action on the Petition to Intervene, and Assistant Attorney General Miller indicated the Board should take action.

Chairman Karsky stated that Assistant Attorney General Miller has conveyed his feeling as to whether or not Ms. Foss met the filing deadline, and even if the Board does not allow her Petition, the Board still has to address these arguments. Chairman Karsky indicated he would allow Ms. Foss to speak since she is a member of the public; therefore, he requested a motion be made on whether the Board will waive the rules and accept the Petition or not.

Member Brucker stated with the blizzard of paperwork before him for this meeting, he did not feel it is appropriate that this comes before him today, adding that he would like to hear the comments and the argument because he does not concur with Chairman Karsky with regard to this material. However, he is not in favor of coming to the table and dropping this on the Board at the meeting.

Chairman Karsky asked Assistant Commissioner Entringer when the document was received and Assistant Commissioner Entringer indicated they were received on December 8, 2005. Chairman Karsky stated the document was not mailed to the State Credit Union Board because of the issue of timely filing.

Member Tonneson asked Assistant Attorney General Miller to explain the options again. Assistant Attorney General Miller stated (1) a motion could be made to suspend the rules regarding the effectiveness of the timeliness of filing of the Petition to Intervene and accept the Petition to Intervene, allowing them to participate as a party, and (2) a motion could be made to not waive the rules and to deny the Petition to Intervene, and merely proceed on the application.

Member Brucker questioned whether we would accept the Petition to Intervene as public comments, and Assistant Attorney General Miller indicated it could be accepted as public comments.

Member Brucker made a motion to not suspend the rules, but accept the Petition to Intervene as a public comment, and not allow the Motion to Intervene. Member Stillwell seconded the motion.

Member Tonneson asked for clarification as to what the motion means, and Assistant Attorney General Miller stated if he is interpreting correctly, the motion is to refuse to suspend the operation of the rule which requires a five day filing, so not accept the Petition to Intervene as timely filed, but to receive it as public comment for discussion purposes when considering the application. Member Brucker indicated that was an accurate interpretation.

Member Tonneson asked when the Petition was received by the Department and Chairman Karsky stated it was received on December 8, 2005, but was signed on December 7, 2005.

Voting in favor of the motion were Members Brucker, Stillwell, and Tonneson. Chairman Karsky voted no, and Member Miller was absent.

Chairman Karsky indicated the application is now before the Board, and at this time CEO Zubke would like to amend his application. CEO Zubke indicated he would like to remove the language “and immediate family members of said residents”, and to include a 75 mile radius of New England and the 50 mile radius of Bowman. CEO Zubke asked whether that was simply a procedural issue for him to move that language in his bylaws, and Chairman Karsky indicated the Department would reword the language, if approved. CEO Zubke stated that is what he was suggesting, that on Exhibit B of his application to expand the field of membership to move the language “residents within a 75 mile radius of New England, residents within a 50 mile radius of Bowman”, behind “residents within a 50 mile radius of Mohall”.

Chairman Karsky then read the proposed field of membership, which would now state “Membership in this credit union is limited to residents within a 75 mile radius of the principal office, residents within a 50 mile radius of Grenora, residents within a 50 mile of radius of Parshall, residents within a 50 mile radius of Turtle Lake, immediate family members of said residents, and residents within a 50 mile

radius of Mohall, residents within a 75 miles radius of New England, and residents within a 50 mile radius of Bowman.”

Chairman Karsky reviewed his Memorandum dated December 5, 2005, with the Board. The Memorandum covered the application to establish a branch at 900 Main Street, New England; the application to expand the field of membership; and the application to merge Heartland Community Credit Union, New England, into Dakota West Credit Union, Watford City.

Chairman Karsky noted that Dakota West Credit Union complied with the procedures set forth in Section 13-03-05-01 of the North Dakota Administrative Code. Chairman Karsky then reviewed the requirements of Section 13-03-05-04 which refers to the requirements the State Credit Union Board should consider when approving a merger application. Chairman Karsky noted that the only comments received had been the Petition to Intervene filed by Marilyn Foss, General Counsel for the North Dakota Bankers Association.

With respect to the portion of the Memorandum dealing with branching, Chairman Karsky noted that Dakota West Credit Union complied with Section 13-03-15-04 of the North Dakota Administrative Code.

Chairman Karsky reviewed the requirements the State Credit Union Board must consider when considering a branch application. It is noted that no comments opposing the application had been received as of the date of the Memorandum; however, Chairman Karsky noted the Petition to Intervene in this application will be received as public comment.

Chairman Karsky continued with the portion of the Memorandum dealing with the application to expand the field of membership. Section 13-03-14-02 of the North Dakota Administrative Code sets forth the criteria the Board shall consider when looking at an application to expand the field of membership. Chairman Karsky noted that the applicant has amended its field of membership prior to the Board’s consideration of the application.

When reviewing the expressed opposition, Chairman Karsky noted that we do have a comment letter from Dakota Western Bank, Bowman, objecting to the use of the name Dakota West Credit Union, as it is too similar to the name of the bank.

Chairman Karsky concluded by indicating the Department did not make a recommendation regarding these applications.

Chairman Karsky asked CEO Zubke to review the applications with the Board, and specifically address management plans.

CEO Zubke noted the relationship with Heartland Community Credit Union dates back approximately 10 years, indicating they have done participation loans with Heartland Community Credit Union by purchasing those loans over the credit union's legal lending limit. CEO Zubke indicated he has also sold participation loans to Heartland Community Credit Union and allowed them to deposit monies in Dakota West Credit Union by paying them a higher than market rate on those deposits. CEO Zubke indicated over the years the Board of Directors of Heartland Community Credit Union has considered ATMs and drive-up lanes, and also noted they have a branch in Bowman that has struggled financially since opening. CEO Zubke indicated that a couple years ago the Board of Directors of Heartland Community Credit Union did develop a plan and invited two credit unions to meet to discuss a possible merger; however, chose at that time not to proceed with a merger. CEO Zubke noted recently Heartland Community Credit Union's manager of approximately 14 years resigned and took a job out-of-state, at which point CEO Zubke indicated he was contacted to see if he was still interested in a merger. CEO Zubke indicated the immediate problem for Heartland Community Credit Union was staffing, as there was also a part-time person who was leaving at the same time as the manager. Various options were discussed, one of which was to sign a management contract with Dakota West Credit Union and allow CEO Zubke to run the Heartland Community Credit Union. The management contract was entered into with Dakota West Credit Union, and CEO Zubke has been managing the Heartland Community Credit Union since September 7, 2005, noting that he has subsequently hired an ag lending officer for the New England office, and is still interviewing and discussing hiring an ag lending officer for the Bowman office. CEO Zubke indicated he has also had his staff discuss operating deficiencies at Heartland Community Credit Union, they have looked through the loan portfolio as well as the past due loan reports, noting this is a similar situation to the Mohall Credit Union, in that the merger would be good for the members as well as the staff and directors. CEO Zubke noted he has offered the directors the same situation as at Mohall, as far as an Advisory Board or a position on the Board of Directors, adding that one of the individuals is considering being on the Board.

CEO Zubke indicated he feels this is a win-win situation for the membership, adding that the membership at Heartland Community Credit Union is wholeheartedly in favor of the merger.

CEO Zubke responded to the North Dakota Bankers Association objection to the field of membership, including immediate family members. CEO Zubke indicated his understanding of Section 6-06-07 simply transferred the existing field of membership to the surviving credit union. CEO Zubke stated he was not intending to subvert the law, but that he understands there are some definition problems and everyone's understanding may be different. CEO Zubke added he does not feel this merger should get bogged down in this discussion, which is the reason he amended the application, and it is important that we continue to move forward and get this application approved if possible.

Chairman Karsky asked if any Board members had questions, and Member Brucker indicated he had several.

Member Brucker stated his questions center around the safety and soundness aspect of the application. Member Brucker asked the approximate size of Dakota West Credit Union in 2002, and CEO Zubke indicated it was approximately \$35 million. Member Brucker asked how many members there are at Dakota West Credit Union, and CEO Zubke estimated 5,000. Member Brucker asked how large the credit union would be after the Mohall and New England mergers, and CEO Zubke indicated it would be approximately \$63 million. Member Brucker asked how many members there would be after the merger. While CEO Zubke was looking through the application to find the potential number of members, Chairman Karsky asked CEO Zubke when he considered the New England merger, had he already anticipated merging with Mohall. CEO Zubke indicated Mohall Credit Union had already taken the position that were going to merge when he started meeting with Heartland Community Credit Union, adding that he was under the impression that the State Credit Union Board would have handled the Mohall application by conference call so that application would be completed long before the Heartland Community Credit Union merger application came before the Board. CEO Zubke added in order to get your name in the pipeline for completion of a merger with a data processing company, he had to assume that the mergers were going to be approved because if he had not, he may be looking at 12 months before he would be able to accomplish the conversion. CEO Zubke indicated the Mohall computer conversion would be completed first and 30 days later the New England computer conversion would be accomplished. CEO Zubke indicated all three credit

unions are on the same data processing platform, adding that the individual employed as the ag lending officer in New England is already using Dakota West Credit Union's lending platform and is doing a fantastic job. CEO Zubke noted since September the assets of Heartland Community Credit Union have increased approximately \$1 million because of this individual.

Member Stillwell asked if the ag lending officer has previous financial institution experience, and CEO Zubke indicated he did work in a financial institution for a couple years and then operated his own farm for 35 years, and will continue operating the farm.

Chairman Karsky asked the ag lending officer's name, and CEO Zubke stated it is Lance Jacobson. CEO Zubke noted that Mr. Jacobson had served on the Heartland Community Credit Union's Board in the past.

Member Stillwell asked if Mr. Jacobson did lending in the previous financial institution and CEO Zubke indicated he thought he did collections.

Member Brucker asked if the number of members would be 6,500 to 6,800 after the Mohall and New England mergers, and CEO Zubke stated he thought it would be approximately 7,000.

Member Brucker noted that Dakota West Credit Union will have grown in the neighborhood of 75 to 100% over the last three years, and asked CEO Zubke if he could comment on how you get your arm around this credit union operationally. CEO Zubke stated that once you get past the third or fourth branch, as long as they are functional and operating properly, you just spread out and do it some more, adding that he does not believe this will incur much more expense or command anymore of his time then in the past.

CEO Zubke noted that Mr. Jacobson is doing a good job, adding that one thing they do is all of the real estate loans, as far as paperwork, are completed in the Watford City, and then the documents are sent to the branches for signing.

CEO Zubke indicated the individuals he is interviewing for Bowman all have extensive agricultural background, noting that all three have previous experience at a financial institution.

Member Brucker asked about the branches that are currently operating, if they are operating in sync with policies and forms. CEO Zubke indicated they have had a minor issue in Turtle Lake, noting that they had to step up their operational issues and around the time the Department started an examination is when they felt this situation was under control. Member Brucker asked if those issues have been resolved, and CEO Zubke indicated they were.

CEO Zubke indicated they have not had any extensive losses, adding that the charge-offs are about 25 percent of industry average for credit unions his size. CEO Zubke noted in regards to delinquencies, there is one credit that is distorting the delinquencies, and they are currently at about 1.7%, and if this issue is resolved, it will reduce delinquencies to approximately .7%. CEO Zubke stated the financial position of Dakota West Credit Union is stable and strong, and the only month it has had negative net income was last month due to a required provision to the loan loss reserve of \$51,000, resulting in a negative \$3,000 profit for the month. CEO Zubke added that he did not agree with the amount the Department required to be put into the reserves, but did not argue.

The Board took a break at 11:20 a.m., and reconvened at 11:22 a.m.

CEO Zubke stated he is aware that management is a concern for everyone, noting that his real estate lending officer has 33 years of experience in a financial institution, with better than 50% of that in the lending area. CEO Zubke noted this individual has been with Dakota West Credit Union for 16 years. The individual in charge of the deposit side has been with Dakota West Credit Union for 17 years, and has a business degree. CEO Zubke indicated he surveyed his employees to find out the years of experience in financial institutions and found that 50% of them have been in a financial institution longer than him, adding that in excess of 50% of them have more advanced education than he also.

Chairman Karsky asked CEO Zubke how many of those individuals can make decisions without having to check with him, and CEO Zubke stated when he initially left the credit union the first 24 hours his cell phone rang quite a bit, but he has been gone for three days and his cell phone has not rung since Monday afternoon. CEO Zubke stated he feels he has three people that could step up and run the credit union, except for one area which would be investments.

Member Brucker asked if there is a formal succession plan if something happened to him and CEO Zubke indicated he is presently working on that plan.

Member Brucker asked CEO Zubke if he could discuss where the credit union is headed, are they going to continue trying to find additional merger partners, or will they assimilate what they have. CEO Zubke stated he is opportunistic and these opportunities simply presented themselves, adding if another opportunity is presented in the next six months he would take advantage of it. CEO Zubke stated he has no intention of doing that because he would like 12 to 24 months to simply get things stabilized.

CEO Zubke stated he feels the track record of the credit union is very good, adding that Chief Examiner Laidlaw probably knows the credit union almost as well as he does, but that he feels the credit union is a very strong organization.

Chairman Karsky asked if the Heartland Community Credit Union was profitable and CEO Zubke indicated it was, but not by much. CEO Zubke added that four years ago Heartland Community Credit Union probably had their best year, which was approximately \$50,000 of net profit, adding that he strives for a 1% return on assets, indicating a bad year to him is .75% return on assets, which was a good year for Heartland Community Credit Union.

Chairman Karsky reiterated that CEO Zubke had stated the Bowman branch is not profitable, and asked if CEO Zubke would keep that location open. CEO Zubke stated he has a specific period of time and specific dollar amount in mind, knowing if it does not come around and become profitable he realizes he may have to take some drastic measures. Chairman Karsky asked if he utilizes branch accounting and CEO Zubke indicated he does. Chairman Karsky asked if New England and Bowman would be dealt with as one branch or separately. CEO Zubke indicated each one would be accounted for separately.

CEO Zubke indicated that all branches except Washburn are currently profitable and that he expects Washburn to be profitable in two to three years, due to the overhead expenses associated with constructing a new branch building.

Member Brucker asked about the minutes of the Heartland Community Credit Union which referred to Mohall as a branch, wondering if that was a typo or if they felt the Mohall merger would already have taken place. CEO Zubke indicated at that point he had already received preliminary approval from NCUA and that the Department had indicated from the application it did not look like there would be a problem. CEO Zubke indicated that is probably a typo, adding that the membership was very much aware of the fact that the credit union had applied for

approval to merge with Mohall Credit Union and that as far as the members are concerned, he did not think there was any confusion.

Member Tonneson asked if one of the three individuals CEO Zubke identified earlier could step in now, being aware of what the credit union is applying for and could they keep all of the plates spinning. CEO Zubke indicated they could.

Member Stillwell wondered where these three individuals were located, and CEO Zubke indicated they were in Watford City.

Member Tonneson asked if Lance Jacobson would be made the branch manager, and CEO Zubke stated he would.

CEO Zubke stated at the present time Mr. Jacobson is doing paperwork for ag loans; however, he is not approving them as the loans are reviewed by someone in Watford City.

Upon a question by Member Stillwell, CEO Zubke indicated the credit union will within the next two years approve loans up to \$50,000 due to the member business loan regulation requirement that loan officers have at least two years experience.

Member Stillwell asked about the projections and wondered why all of the expenses are the same amount. CEO Zubke indicated he was splitting amounts between two branches and trying to reach the totals he had for the previous year. CEO Zubke indicated there was some confusion as far as whether or not he combines New England and Bowman, or should it be done as an entire organization; however, rather than that, he chose to split them apart. CEO Zubke indicated he spends more of his time on the final number.

Member Brucker indicated he was not sure that Member Stillwell's question was answered, as far as how those numbers were arrived at.

Chief Examiner Laidlaw noted the operating expenses for Heartland Community Credit Union through September 30, 2005, were approximately \$17,000 and on an annualized basis that would come out to approximately \$24,000, which is roughly right in line with what CEO Zubke has in his application.

Chairman Karsky asked if Chief Examiner Laidlaw had the net income figure. Chief Examiner Laidlaw indicated for September 30, 2005, the net income was \$32,584, adding that what CEO Zubke said earlier is that Bowman is operating at about breakeven, but the real profit is coming out of the New England office.

Chairman Karsky indicated his concerns were with the fact that there is not going to be an individual in the New England office that can answer the day-to-day operational questions, and had the same concern regarding the Bowman office. Chairman Karsky continued that CEO Zubke had indicated he was not spending as much time there as he had in the beginning, adding it is probably not the loans that will cause problems, but little things that could create problems. CEO Zubke indicated although that point is well taken, the responsibility for the operational issues will come out of the Watford City office. CEO Zubke continued if this merger is not approved, the scenario described has a more likely chance of happening, adding that he understands the concern but from an outsider's point of view he felt the comfort level should be higher once this merger is approved. CEO Zubke indicated it is currently more burdensome, adding as soon as the merger is approved a lot of the current problems will disappear. CEO Zubke concluded that the issues and concerns Chairman Karsky has should be diminished after completion of the merger.

Chairman Karsky asked Chief Examiner Laidlaw how he felt about the concerns he has raised. Chief Examiner Laidlaw indicated that management succession is the main issue, adding that this is a complicated credit union to run. Chief Examiner Laidlaw stated he is not sure if Watford City has someone that can step in and take over right now, adding that he would hope CEO Zubke would work on the management succession plan. Chief Examiner Laidlaw indicated it is not just these issues, but liquidity and asset liability management are areas that are fairly tough to manage, adding he was not sure there was someone currently on board that could come in and manage those areas. CEO Zubke stated there is not someone that could step in to manage the asset liability management area. Chief Examiner Laidlaw concluded that CEO Zubke needs to work at getting someone trained to address those issues.

Chairman Karsky inquired as to whether the Board of Directors of Heartland Community Credit Union even attempted or thought about hiring someone to manage the credit union, or if their immediate thought was to merge. CEO Zubke stated their immediate thought was to merge because they had considered over the

past two years, adding that the manager leaving was the spark that ignited the plan that is currently in place.

CEO Zubke continued as far as liquidity, these mergers help the liquidity for Dakota West Credit Union, and also diversifies the credit union. CEO Zubke indicated he is not absolutely irreplaceable, and continued by asking Chief Examiner Laidlaw how many credit unions he has been in where the manager is comfortable leaving during the middle of the examination. Chief Examiner Laidlaw stated very few.

CEO Zubke asked Chief Examiner Laidlaw whether he, CEO Zubke, was there during the entire examination, and Chief Examiner Laidlaw indicated he was not present for the entire examination. CEO Zubke noted that in his absence all of the reports and documentation requested by the examiners at every branch were given to them. CEO Zubke noted there are a lot of good people behind him helping run the organization, noting if he were gone they would have to step up, and stated they are in a position where they can step up.

Chairman Karsky noted it is one thing to do your daily job, but to have to step up and make decisions you have never had to make before is different. Now that two new credit unions will be added, Chairman Karsky stated he is not real comfortable with the present management situation. CEO Zubke asked if there was a credit union they would be more comfortable with, indicating he felt the legacy of this credit union is very good in that they have done a good job with every merger they have put together and stated you could go to any one of those managers and they would say it was a good thing. CEO Zubke indicated if he were gone in six months, he would probably not see another merger, and added he is a type A personality and is driven.

Member Brucker indicated he is more concerned about whether there is someone that can step in and run the operation. CEO Zubke indicated he did not feel that is a problem. CEO Zubke indicated he feels that it has been made clear that he has qualified staff to run the operation.

Member Stillwell asked what is going on with the CUSO, and CEO Zubke indicated that the manager is taking care of some operational issues, adding that Dakota West Credit Union probably gets less of the manager's time than they want. Member Stillwell wondered if other credit unions are working with CEO Zubke

and/or interested in that. CEO Zubke indicated there are currently eight credit unions they work with.

Member Stillwell asked if there is someone from Watford City that goes around to all the branches to see if they are following their corporate processing procedure. CEO Zubke indicated all the branches are under the same processing system; they can look at the transaction journal and everything is right there. CEO Zubke indicated he reviews the report that gives him the entire general ledger posting and someone else also reviews that information as well.

Member Stillwell asked about loan documentation, and CEO Zubke indicated all of the documentation, with the exception of credit reports, is on their server.

Chairman Karsky asked CEO Zubke if he has had an opportunity to read the letter from Olson, Burns & Lee, and CEO Zubke indicated he had. Chairman Karsky wondered if CEO Zubke had any comments. CEO Zubke indicated Olson, Burns & Lee makes reference to being in the same business; however, CEO Zubke indicated we are not in the banking business, adding they are not a bank and in fact cannot use the term. CEO Zubke indicated he is aware of the issue and understands the issue, but is not interested in changing his name. CEO Zubke indicated there is a Dakota Community Bank in Bowman, as well as the Dakota Western Bank. CEO Zubke indicated he understands the concern.

Chairman Karsky asked if any of the Board members had any comments or questions on the issue raised in the letter from Olson, Burns, & Lee.

Chairman Karsky indicated Dakota West Credit Union's name has already been approved and has been recorded, and the bank is the same way. Chairman Karsky indicated there is not a lot the Board can do, and asked Assistant Attorney General Miller if that is correct. Chairman Karsky indicated if the bank wanted to take action, it would probably have to sue.

Assistant Attorney General Miller stated according to the information Olson, Burns & Lee gave the Board, the Dakota West Credit Union has had its name since 1949; however, CEO Zubke interjected that the credit union's name used to be McKenzie County Credit Union, which was changed in approximately 1992 to Dakota West Credit Union. Assistant Attorney General Miller stated it was probably at that time that Dakota Western Bank should have addressed this issue if they thought there was some sort of competitive issue; however, now that the

institutions will be in the same city, this is a different issue. Assistant Attorney General Miller stated he does not believe this is something the State Credit Union Board has any authority over.

Chairman Karsky asked CEO Zubke what really distinguishes them since they are making ag loans, cashing share drafts and checks; and added that they are competing for the same dollar. Chairman Karsky continued that Dakota West Credit Union makes a number of business loans, as well as being competitive on deposits, adding that the customers of the credit union write checks, the credit union offers CDs, and has a CUSO that offers many services. Chairman Karsky indicated he feels the credit union is about as close to the type of business of a bank as you can get, but as far as the name issue, if either was going to change its name the Secretary of State might have a problem if one was going to drop or add a word, as the names are too similar, and therefore would not grant approval.

CEO Zubke indicated at this time there are two different Dakota Plains Credit Unions, and asked how many different First Security Banks and First National Banks there are in the state. CEO Zubke indicated the banking industry is rife with some of the same names.

Chairman Karsky asked Ms. Foss if she would like to make any comments.

Ms. Foss indicated she had a comment that dealt with the language of the statute. Ms. Foss indicated in her objection, which the Board is now treating as a comment, she did not protest the credit union retaining immediate family members, and the reason for that is because of the language in the statute. The statute says the surviving credit union may expand the field of membership to include the geographic field of membership of the merged credit union. The statute does not make reference to a different date and it might be a quirk in the language or intentional, but the language in the statute, as it pertains to merging credit unions, is different than for two credit unions that are not merging. Ms. Foss continued that there is some basis to distinguish because as we had heard today, the mergers typically take place when there are troubled credit unions involved or at least marginal credit unions involved, and so there is some reason for treating a merging and continuing credit union differently. Ms. Foss indicated she suspects it will come up in the upcoming application and she wanted the Board to know she did not miss something, as the language is different in the statute.

Upon a question from Member Tonneson, CEO Zubke indicated he did not build an ag loan officer into the projections for Bowman, as he has not decided whether he will hire a loan officer for that location.

Member Stillwell indicated her concern is that this is the fifth merger in three years, and she analogized the potential problems to a loan which the problems do not show up several years after the loan is made.

Chairman Karsky indicated the Board should be ready to act on the application and reminded them that the Department did not make a recommendation, but did include a proposed Order.

Chairman Karsky stated the reason a recommendation was not made includes the issues that have been discussed during this meeting, and answers to those issues needed to be heard before a recommendation could be made. Chairman Karsky stated the Department is not recommending denial of the application either, adding that his concerns are not necessarily alleviated if the Board denies the application. Chairman Karsky noted that a lot of the answers given today gave him more comfort and added there is a lot of work to do in getting other employees ready to step up. Chairman Karsky pointed out that Dakota West Credit Union has grown in the last two to three years, and the locations encompass many miles from the main office. Chairman Karsky stated he feels they are missing someone in New England that can handle the routine daily issues, which makes the application weak. CEO Zubke he wanted to reassure the Board that most of the work has been done since he is running the New England and Bowman offices and they are responding to him.

Chairman Karsky asked how long the management contract is with Heartland Community Credit Union, and CEO Zubke indicated it is open-ended and actually states until the merger is complete. CEO Zubke continued that they have been running the New England office for 90 days without an ag lending officer and now they have one, adding that most of the major hurdles have been crossed. CEO Zubke added from a safety and soundness issue to him the merger is the only thing that makes sense.

It was moved by Member Tonneson and seconded and by Member Brucker to approve the application by Dakota West Credit Union, Watford City, to merge Heartland Community Credit Union, New England, into Dakota West Credit Union, Watford City; to approve the field of membership

application by Dakota West Credit Union, Watford City, as amended; and to approve the branch application of Dakota West Credit Union, Watford City, to establish a branch in New England.

The Board went into closed session at 12:07 p.m., and reconvened to open session at 12:23 p.m.

There being no further discussion on the above motion, **the motion was carried by a vote of 4 to 0, with Member Millar absent.**

The Board adjourned for lunch at 12:25 a.m., and reconvened at 1:30 p.m.

Cindy Hegland was added by conference call at this time.

NORTH STAR COMMUNITY CREDIT UNION, MADDOCK – APPLICATION TO EXPAND FIELD OF MEMBERSHIP

Chairman Karsky indicated the Board should have the Notice of Intent to Protest and Petition to Intervene filed by Marilyn Foss, General Counsel of North Dakota Bankers Association, and the Board has before it the same option available as in the previous application by Dakota West Credit Union, Watford City.

Chairman Karsky indicated it was his recommendation to waive the filing deadline so that Ms. Foss could intervene, and asked for a motion in this regard.

Chairman Karsky asked Assistant Attorney General Miller to review the options for the Board. Assistant Attorney General Miller indicated (1) a motion could be made to suspend the rules regarding the effectiveness of the timeliness of filing of the Petition to Intervene and accept the Petition to Intervene, allowing them to participate as a party, and (2) a motion could be made to not waive the rules and to deny the Petition to Intervene, and merely proceed on the application.

Member Tonneson asked what the issue was in the Notice of Intent to Protest, and Ms. Foss indicated the issue was the immediate family membership in the application.

Member Brucker asked if no action is taken by the Board, does this mean we do not allow it, and Assistant Attorney General Miller indicated that is not an option, since the Notice has been received and the Board must take action.

Member Brucker moved that the State Credit Union Board not allow the Motion to Intervene and not to suspend the rules, but accept the Petition as public comment. Member Stillwell seconded the motion, and the motion carried with Members Brucker, Stillwell and Tonneson voting in favor, Chairman Karsky voting no, and Member Millar absent.

Chairman Karsky stated the application is now before the Board, and recognized Cindy Hegland, CEO of North Star Community Credit Union, Maddock.

Chairman Karsky asked Mr. Tschider if he was representing the credit union, and Mr. Tschider indicated he was.

Chairman Karsky reviewed his Memorandum dated December 5, 2005, and stated that as of the date of his Memorandum no comments had been received concerning this application. However, Chairman Karsky acknowledged receipt of the Notice to Protest and Petition to Intervene filed by Marilyn Foss, General Counsel of the North Dakota Bankers Association.

Chairman Karsky noted that the application met the requirements for an expansion for the field of membership found in Section 13-03-14-03 of the North Dakota Administrative Code. Chairman Karsky concluded without reviewing the recommendation.

Mr. Tschider indicated the Board has before it an application which indicates the present field of membership, and that he would like to review that with the Board. Mr. Tschider noted the final amendment to the bylaws for the field of membership was approved by the Board on March 1, 2002, which now indicates the membership in North Star Community Credit Union is limited to those who reside within a 50 mile radius of Maddock, Rugby, Bottineau, and Cavalier, and members of their immediate families. Mr. Tschider noted as everyone is aware, the law was changed. Mr. Tschider proceeded to distribute a copy of the law, noting that the portion highlighted is different than what the North Dakota Bankers Association was concerned with in the previous merger application. Mr. Tschider noted in Section 6-06-07(2), the sentence highlighted says the restrictions on location and

field of membership under this Section do not apply to a credit union office, location, or field of membership approved by the Board before January 1, 2005. Mr. Tschider noted the credit union is not giving up the field of membership; it is simply amending one portion which is the 50 mile to 75 mile radius of Maddock, adding that nothing else is going to change. Mr. Tschider continued that the field of membership language is going to stay the same and that the only thing that differs with this application is that it would change from a 50 to a 75 mile radius for one location, adding that the other entire field of membership language stays the same. Mr. Tschider continued that what he is submitting to the Board is that immediate family language is already in there and was approved by the State Credit Union Board prior to January 1, 2005, so it should remain regardless of how you feel about immediate family. Mr. Tschider explained what was there on January 1, 2005, was immediate family, which should not change, and to try to say that the first sentence excludes what this sentence says is improper. Mr. Tschider stated this was part of the testimony at all the hearings by the proponents, which were the banks and some of the credit unions. Mr. Tschider stated we are not attempting to change the language, just like we are leaving intact the discussion on Cavalier, Rugby, and Bottineau. Mr. Tschider indicated when you look at the field of membership of Cavalier, Rugby, and Bottineau and members of their immediate families, which was in effect prior to January 1, 2005, is going to stay the same. Mr. Tschider indicated what is being submitted to the Board at this time is that the issue raised by the North Dakota Bankers Association, as public comment, is not applicable; the law speaks for itself and North Star Community Credit Union has immediate families in its field of membership prior to January 1, 2005.

Chairman Karsky asked CEO Hegland if she wanted to discuss the reason for her application, and Ms. Hegland indicated she agrees with what Mr. Tschider has said; nothing is being changed except for the Maddock geographical area.

CEO Hegland indicated she could give statistics as to how the credit union could lose members without this expansion of the field of membership. Ms. Hegland noted North Star Community Credit Union has lost 38 members so far this year, which is net figure. CEO Hegland indicated they are gaining 10 to 12 members each month, but on a net basis so far this year they have lost 38 members. CEO Hegland indicated she thought the majority was due to death, but she found that is not the case, that a majority of their members are moving away from the small community. CEO Hegland noted the credit union's savings and loans have not grown in Maddock; therefore, her concern is if she can take on additional

people without additional cost, it would provide more revenue for the credit union and help with the liabilities it has right now.

Chairman Karsky asked CEO Hegland how many members she thought she could add, and CEO Hegland indicated she had not done a geographical study. Chairman Karsky asked if it could be hundreds or thousands additional members, and CEO Hegland stated it would probably be in the hundreds.

Chairman Karsky stated he would give Ms. Foss an opportunity to address the Board.

Ms. Foss indicated she does recognize the task that the State Credit Union Board is charged with is not easy. Ms. Foss indicated we do have a new law and it is the Board's job as we start to work through it to implement that new law, not as we might like it to have been written, but as it is written and in accordance with the intent of the Legislature. Ms. Foss indicated one item the most clear about the new law is that there had been a kind of mishmash of Board policies and long standing disagreements under the previous law which talked about the boundaries of an open credit union and geographically based credit union being a well-defined rural or urban district. The focus of this law was to recognize that the common bond of geography based credit unions is geography, which is why the statute and changes were phrased in terms of geography. Ms. Foss indicated she cannot speak for what Mr. Tschider was thinking when this was being drafted, but added that probably no one was thinking about the issue of immediate family because it was not in the existing statute that talked about geography, and frankly they were working on the existing statute and this was not in any of the Department's rules. Ms. Foss continued that the overriding point of this was to have to have a geography based credit union with members who reside within the geography. Ms. Foss indicated it is her position that a credit union who wants to take advantage of the new law has to live by the provisions that are in it. Ms. Foss indicated she might note in the statute it is 75 miles from the main office of the credit union, not 75 miles from the community. Just as a matter of language when you are amending these bylaws it is from the main office, noting that the rules neither accommodate measuring from the boundaries of a town and the statute says 75 miles from the main office, adding that she has been assured that the Department types the changes, and that is the change that would be made, adding it should be pointed out the law does not provide 75 miles from a community, but rather 75 miles from the main office. Ms. Foss stated that what is happening is that the credit union's field of membership is changing, they are not just keeping their old field of membership, and they are changing and

amending their documents and amending their corporate documents to adopt the new and expanded and liberalized field of membership that is within the new law. Ms. Foss continued that for the most part she and Mr. Tschider agree on what the law says as far as the 75 mile radius from the main office, that there is no basis in the statute for credit unions that have not had immediate family language in their bylaws to now add that language; and that she understands that we agree you cannot add immediate families in the 50 to 75 mile radius because, again, there is nothing in the new law to accommodate that. Apparently the issue being argued about is the issue that if you take advantage of the new law on the 75 mile radius, do you keep immediate family membership from the old language. Ms. Foss indicates she understands during the hearings everyone thought the language was so clear that there would be no need for interpretation, adding that what she would propose as an option for the Board's consideration, is on this point of immediate family membership that you consider the application on this 75 miles from the main home office and request an Attorney General's Opinion on this immediate family issue for those credit unions that had it within their bylaws. By requesting the Attorney General's Opinion it would bring clarity to this issue. Ms. Foss stated those are essentially the arguments of the North Dakota Bankers Association, and if you are going to take advantage of the new law, then you need to live with the words that are written, and any bylaw change going forward and approval of the field of membership going forward would not be as before January 1, 2005.

Member Brucker asked if what Ms. Foss is saying is that when you amend the bylaws, you give up the immediate families. Ms. Foss stated going forward you would have the field of membership that says a 75 mile radius from some fixed point and that because the common bond of a geography based credit union is geography and not anything else. Geography is the common bond. Ms. Foss continued that is not necessarily true for an associational based credit union, but for a geography based credit union the common bond is geography.

Chairman Karsky asked Mr. Tschider if he would like to respond. Mr. Tschider indicated that Ms. Foss and he do agree that the 75 miles is from the home office of the credit union, and that they also agree if you did not have immediate family in your field of membership prior to January 1, 2005, you cannot get it now. Mr. Tschider continued to say that because you apply to take advantage of the 75 mile radius that you lose immediate family and carry that to the logical extreme, then Maddock would also lose Rugby, Cavalier, and Bottineau. Mr. Tschider questioned why we are only picking portions of the field of membership and saying those must be terminated, but the other portions should not, adding that he did not

think the Legislature ever intended that. Mr. Tschider pointed out in this field of membership we have five different categories: Maddock, Rugby, Bottineau, Cavalier, and their immediate families. Mr. Tschider continued if you take the North Dakota Bankers Association's logic that we are going to get rid of one because you apply, the question becomes why are you just getting rid of one and not four, continuing that it does not make sense that the North Dakota Bankers Association should be able to pick one. Mr. Tschider stated the fact of the matter is that the law says whatever was there on January 1, 2005, you keep, indicating he had a quote from one of the Senate hearings in which Mr. Schlosser from the North Dakota Bankers Association basically said everything that is in place now will remain the same, which was what our understanding and intent was. Mr. Tschider indicated that was the intent, right or wrong, that whatever you had is what you kept. Mr. Tschider continued that Ms. Foss is right, the issue of immediate family was not thought about at that time; the principal concern at that time was First Community Credit Union, Jamestown, because of all the branching they had done, so the discussion was that that credit union had to be left intact regardless if it was done properly or not. Mr. Tschider argued that whatever was granted before was grandfathered in; therefore, immediate family is grandfathered in. Mr. Tschider stated the only thing North Star Community Credit Union is changing is the 75 mile radius from Maddock.

Mr. Tschider continued that he submits to the Board that immediate family was there previously, was part of the old field of membership, the law says you keep your old field of membership; therefore, it should continue.

Chairman Karsky reviewed his recommendation from his December 5, 2005, Memorandum, which notes that the issue has arisen whether or not a credit union can include the terminology "immediate family" with an expansion of a 75 radius. Chairman Karsky noted the Department is not making a recommendation on this application at this time; however, the Department does not have a problem with the expansion to a 75 mile radius, but will entertain comments regarding immediate family.

Chairman Karsky noted since that recommendation was written he has an opportunity to visit with Assistant Attorney General Miller, as well as Mr. Tschider and Ms. Foss, and in his opinion he feels it is a gray area. Chairman Karsky stated he feels it would be appropriate for the Board to have an opportunity to listen to Assistant Attorney General Miller.

Assistant Attorney General Miller stated until he had received the paper from Mr. Tschider he did not really understand his arguments, noting that the highlighted portion does seem to allow a credit union to keep immediate families within their field of membership, even though as Ms. Foss accurately points out that that has never been the law and more than likely is something that never really should have been in there. Assistant Attorney General Miller continued it is in there and he feels he must agree with Mr. Tschider that the statute seems to say that you get to keep whatever you had; however, differs from Mr. Tschider that he is not asking for the same thing that he has, because what is now being asked for is 75 miles and immediate family members, which may allow someone outside the 75 mile radius to become a member, adding that he does not think the Board has the authority to approve it. Assistant Attorney General Miller indicated he feels the statute is clear, which right now it is a 75 miles, but it does allow you to keep what you have. Currently, North Star Community Credit Union has 50 miles and immediate family as opposed to what they want, which is 75 miles and immediate family, which is different.

Chief Examiner Laidlaw pointed out that under the powers of credit unions it gives the state-chartered credit union the authority to do anything that a federal chartered credit union can do, subject to rules that the Board may adopt. The State Credit Union Board adopted a policy on immediate family that was the same as NCUA. Chief Examiner Laidlaw asked Assistant Attorney General Miller if that had any impact on his position. Chairman Karsky interjected that he has the policy; however, he understands that that when you have a specific statute, that supersedes any previous laws, and now you have the new statute which limits it to a 75 mile radius. Chairman Karsky continued that previously the Department had a pretty restrictive interpretation as to what immediate family meant and it seemed to indicate that you had to live in the same household until Mr. Tschider petitioned the State Credit Union Board to broaden its interpretation and make it in line with the NCUA. That request in 2001 was granted and broadened the definition of immediate family to be in line with NCUA's definition.

Chief Examiner Laidlaw indicated the point he was trying to make is that prior to this new law Assistant Attorney General Miller said he could argue that you could not include immediate family or that it could be argued that it was not legal; adding that what he was thinking is that it was legal because of the wild card provision. Under the new law, Chief Examiner Laidlaw stated it seems to him you can keep the immediate family for the 50 mile radius of Maddock, but for that extra 25 miles you probably could not include immediate families.

Mr. Tschider interjected to summarize Assistant Attorney General Miller's statement; basically he was saying that immediate family would still continue to apply to the 50 mile radius that North Star Community Credit Union currently has, but if you jump to the 75 mile radius, the immediate family would not apply for individuals 50.1 to 75 miles. Assistant Attorney General Miller stated the way the bylaws are written for the change in the application, he does not think the State Credit Union Board can approve that; however, if the credit union was to amend this to leave in the existing field of membership and then after immediate families put in the additional 25 miles, that would be one thing. However, by just changing the 50 miles to 75 miles, it would not be something the Board could approve.

Mr. Tschider stated North Star Community Credit Union would amend its application to conform to what Assistant Attorney General Miller indicated was allowable. Mr. Tschider continued that the intent here is that the immediate family will be retained for the 50 mile radius of Maddock, but immediate family will not apply to the additional 25 mile radius.

CEO Hegland indicated that was acceptable to her.

Chairman Karsky indicated he struggles with this issue; adding that he can read the statute to state it does not extend beyond 75 miles. He stated he can live with the immediate families in the 50 mile radius. Chairman Karsky stated an Attorney General's Opinion might be necessary, which is something the Board can decide. However, the Attorney General's Opinion could be that the immediate family is lost for the entire 75 mile radius.

Mr. Tschider indicated the fact of the matter is that North Star Community Credit Union would like the Board to vote on the application as amended today, and does not prefer to wait for an Attorney General's Opinion.

Chairman Karsky stated he feels trying to enforce the bylaws as amended is a nightmare, because of trying to determine if someone lives within the 50.1 miles or 49.9 miles, adding he can see another issue is if someone lives within the 50 mile radius and then moves outside this radius.

Member Brucker stated the burden of regulating that falls on the credit union itself.

Assistant Attorney General Miller interjected that as State Credit Union Board members you have a responsibility to enforce the law as you interpret it, and as long as you do so in a manner that shows good faith, whether you make a mistake is irrelevant. As long as you are following along in good faith, the Board does not need an Attorney General's Opinion to tell you what to do. Assistant Attorney General Miller added that the Board's interpretation of the statute is entitled to deference.

Ms. Foss commented on Chief Examiner Laidlaw's discussion regarding the wild card statute, in that there is an Attorney General's Opinion that states that the wild card statute does not supersede the field of membership statute and that when we are talking about field of membership issues, what we look at is the field of membership statute, not the wild card statute.

Member Tonneson stated he feels the amendment makes sense and that Assistant Attorney General Miller and everyone had good points, and asked Assistant Attorney General Miller if he felt the compromise here made sense to him. Assistant Attorney General Miller stated if you were to ask for an Attorney General's Opinion he would look at the legislative history as well as previous Attorney General's Opinions; however, at this point he feels the compromise does make sense to him.

Member Brucker moved the State Credit Union Board approve the field of membership as amended by North Star Community Credit Union, Maddock. The motion was seconded by Member Tonneson.

Chairman Karsky asked Assistant Attorney General Miller if the amendment is within the parameters of the original notice, and Assistant Attorney General Miller indicated we are actually reducing the potential number of members.

After further discussion, the motion carried by a vote of 4 to 0, with Member Millar absent.

CEO Hegland left the meeting at 2:30 p.m.

CAPITAL CREDIT UNION, BISMARCK – APPLICATION TO EXPAND FIELD OF MEMBERSHIP

Mr. Tschider indicated that Capital Credit Union, Bismarck, wishes to amend its application to a 75 mile radius of the home office in Bismarck and to amend their application to exclude immediate families in the 50 mile radius out to 75 mile radius of the home office in Bismarck.

Assistant Attorney General Miller asked where they got the 50 mile radius because it does not state that, it refers to Bismarck-Mandan and vicinity.

Chairman Karsky indicated the bylaws that state a trade area is assumed to be a 50 miles radius based on policy of the State Credit Union Board. Chairman Karsky clarified they would retain immediate family for the old field of membership and then add the additional 25 miles excluding immediate families. Mr. Tschider stated that was correct.

Chairman Karsky pointed out we have received a Notice of Intent to Protest and Motion to Intervene, and the Board has the same three options as on the prior two applications.

Member Brucker moved and Member Stillwell seconded that the State Credit Union Board not allow the Motion to Intervene and not suspend the rules, but accept the Motion as public comment. The motion carried with Members Brucker, Stillwell, and Tonneson voting in favor, Chairman Karsky voting no, and Member Millar absent.

Assistant Commissioner Entringer reviewed his December 5, 2005, Memorandum, which included the criteria the State Credit Union Board should consider when acting on expansion of field of membership application, which are found under Chapter 13-03-14 of the North Dakota Administrative Code, noting that the Motion to Intervene will be received as public comment.

Assistant Commissioner Entringer noted the application met the criteria found in Section 13-03-14-03 of the North Dakota Administrative Code, and the recommendation of the Department is to approve the application by Capital Credit Union, Bismarck, to expand its field of membership as proposed.

Member Brucker asked for clarification as to why vicinity is interpreted to be 50 miles, and Mr. Tschider indicated that was a policy established under former Commissioner Preszler and has been the interpretation since; however, the credit union is satisfied with the application as amended.

It was moved by Member Stillwell and seconded by Member Tonneson to approve the application as amended by Capital Credit Union, Bismarck, to expand its field of membership. The motion carried by a vote of 4 to 0, with Member Millar absent.

Doug Wolf, Greg Tschider, Marilyn Foss, and Deb Gallagher left the meeting at 2:45 p.m.

PROPOSED CHANGES TO THE ADMINISTRATIVE RULES

Chairman Karsky noted the Board members should have a copy of the proposed Administrative Rules. Most of the members were at the Day With The Commissioner at which time the Department accepted some suggested language changes from those credit union personnel in attendance.

Chairman Karsky noted the process started as of a result of the Department's reaccreditation, as one of the questions was whether the Department's laws and rules were up to date. Chief Examiner Laidlaw began going through the rules to make sure they were current.

Chairman Karsky noted the Department has met with the North Dakota Credit Union League, as well as Greg Tschider, a number of times to come to a consensus on the changes the Board has before it now.

Chairman Karsky noted the procedure for adopting the rules requires a comment period before and after a hearing, and then Assistant Attorney General Miller noted that the rules do not become effective until they have been approved by the Administrative Rules Committee.

Chairman Karsky asked Chief Examiner Laidlaw to review the changes that were discussed at the Day With The Commissioner on December 13, 2005.

Chief Examiner Laidlaw discussed the proposed changes to page 23, item 14, where after the words “tangible property” you would insert “for all leases greater than one hundred thousand dollars”. Also being changed on page 24 after “13-03-19-05”, you would end the sentence “after a credit union”, deleting the language “up to a limit of two million dollars”. The final change was on page 25, under “13-03-20-02(1)(a)”, you would end the sentence after NDCC and change the per centum to 15 from 10.

After further discussion the Board was in consensus that the rule making procedure should begin.

MEETING DATES FOR 2006

Assistant Commissioner Entringer noted the Board has been meeting the first Friday of March, June, September, and December. The Board agreed to meeting dates of March 3, June 2, September 8, and December 1, 2006.

The Board went into closed session at 3:12 p.m.

Timothy J. Karsky, Chairman

Robert J. Entringer, Secretary